



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 21, 1995

Mr. Richard D. Monroe
Deputy General Counsel
Texas Department of Transportation
Dewitt C. Greer State Highway Bldg.
125 East 11th Street
Austin, Texas 78701-2483

OR95-1558

Dear Mr. Monroe:

You have asked whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 30927.

The Texas Department of Transportation (the "department") received a request for information about out-of-state travel that was approved within the department's construction and maintenance division during the time period between May 1994 and December 1994. You contend that these records, a representative sample of which you submitted to this office for review, are excepted from disclosure under section 552.103(a). To show the applicability of the section 552.103(a) exception, a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4.

You provided information showing that departmental employees have filed suit against the department, alleging employment discrimination. You state that at least one of these employees has specifically complained that the department denied the employee's requests and opportunities for travel and training. You also submitted for review a "representative sample" of the requested information. The documents submitted to this office appear to be related to the subject of the pending litigation. Since you have shown the applicability of section 552.103(a), the requested documents may be withheld from disclosure.¹

¹In determining that these documents may be withheld, we assume that the representative samples of information you supplied to this office are truly representative of the requested records as a whole.

In reaching this conclusion, we assume that the opposing parties to the pending litigation have not previously had access to the records at issue. Absent special circumstances, once information has been obtained by all parties to the litigation, for example, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision No. 349 (1982) at 2. If the opposing parties to the litigation have had access to any of the information in these records, there would be no justification for now withholding that information pursuant to section 552.103(a). The applicability of section 552.103(a) also ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982) at 3. We note that since the section 552.103(a) exception is discretionary with the governmental entity asserting the exception, it is within the department's discretion to release this information to the requestor. Gov't Code § 552.007; Open Records Decision No. 542 (1990) at 4.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/rho

Ref.: ID# 30927

Enclosures: Submitted documents

cc: Ms. Elizabeth S. Boswell
(w/o enclosures)

(Footnote continued)

See Open Records Decision Nos. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body can submit representative sample; but if each record contains substantially different information, all must be submitted.) This decision does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than what was submitted to this office.

Mr. Noberto Flores
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(w/o enclosures)